Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

RICHARD D. GREEN,
Petitioner,

vs.

GERBER PRODUCTS COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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72 pp

QUESTIONS PRESENTED

1. Whether the Federal Circuit's "point of novelty" test used in determining design patent infringement conflicts with this Court's prior opinions and the litigant's Seventh Amendment right to a jury trial.

2. Whether the Federal Circuit's affirmance of the district court's summary judgment of design patent non-infringement allowing the district court judge to combine unrelated references and resolve disputed issues of fact is a failure to comply with precedent that requires an ornamental suggestion before combining unrelated, prior art references.

LIST OF PARTIES TO THE PROCEEDING

The names of all parties in the Court whose judgment is sought to be reviewed appear in the caption of this Petition for a Writ of *Certiorari*.

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i

LIST OF PARTIES TO THE PROCEEDING ii

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 1

FEDERAL STATUTES INVOLVED 2

STATEMENT OF THE CASE 2

I. The Patent 3

II. The Accused Design 3

III. District Court Litigation 3

IV. Federal Circuit Opinions 7

REASONS FOR GRANTING THE WRIT 8

I. The Federal Circuit's Decision is Inconsistent with Precedent of this Court 9

II. The Decision of the Court of Appeals is Inconsistent with Precedent 12

III. The Seventh Amendment Right to a Jury Trial Required The Issue of Infringement to be Presented to a Jury 14

CONCLUSION 15

APPENDIX A
Unpublished Opinion, Court of Appeals for the Federal Circuit, Decided August 12, 1997 ..... A-1

APPENDIX B
District Court Order Re: Cross Motions for Summary Judgment; Dismissal of Action Against Defendants on Ground of No Infringement B-1

APPENDIX C
District Court's Reporter's Transcript of Proceedings, April 29, 1996 ..... C-1

APPENDIX D
Order Denying Rehearing and Suggestion for Rehearing In Banc, Court of Appeals for the Federal Circuit, Filed October 6, 1997 ..... D-1

APPENDIX E
United States Patent Des. 349,769, R. Green, Protective Cap for a Baby Bottle E-1

APPENDIX F
Gerber Protective Cap for a Baby Bottle F-1

APPENDIX G
United States Patent Des. 276,700,
J. Brown et al., Combined Modified Hood
and Collar Assembly..... G-1

APPENDIX H
United States Patent Des. 286,911,
W. Campbell et al., Baby Bottle H-1

APPENDIX I
French Patent No. 967,458, K. Zimmermann,
Container With a Special Sealing Feature for
a Baby Bottle..... I-1

TABLE OF AUTHORITIES

CASES

Anderson v. Liberty Lobby, Inc.
477 U.S. 242, 106 S. Ct. 2505 (1986).....15

Blumcraft of Pittsburgh v. U.S.
372 F.2d 1014 (Ct. Cl. 1967).....11

In re Borden
90 F.3d 1570 (Fed. Cir. 1996).....13

Burger Train Systems, Inc. v. Ballard
552 F.2d 1377 (10th Cir. 1977).....11

In re Rosen
673 F.2d 388 (CCPA 1982).....13

Durling v. Spectrum Furniture Co.
100 F.3d 101 (Fed. Cir. 1996).....13

In re Glavis
230 F.2d 447 (CCPA 1956).....13

Gorham Co. v. White
81 U.S. (14 Wall.) 511 (1871).....9, 10, 11

In re Harvey
12 F.3d 1061 (Fed. Cir. 1993).....13

In re Jennings
182 F.2d 207 (CCPA 1950).....13

Litton Systems, Inc. v. Whirlpool Corp.
728 F.2d 1423 (Fed. Cir. 1984) 11

Markman v. Westview Instruments, Inc.
517 U.S. 370, 116 S. Ct. 1384 (1996) 14

Payless Shoesource, Inc. v. Reebok Intern. Ltd.
998 F.2d 985 (Fed. Cir. 1993) 11

Pennwalt Corp. v. Durand-Wayland Inc.
833 F.2d 931 (Fed. Cir. 1987) 11

Schnadig Corp. v. Gaines Manufacturing Co.
494 F.2d 383 (6th Cir. 1974) 11

Sears Roebuck & Co. v. Talge
140 F.2d 395 (8th Cir. 1944) 11

South Corp. v. U.S.
690 F.2d 1368 (Fed. Cir. 1982) 10, 14

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Seventh Amendment 1

STATUTES

UNITED STATES CODE

28 U.S.C. § 1254(1) 1

35 U.S.C. § 171 .....2, 10

35 U.S.C. § 271 3

35 U.S.C. § 284 3

35 U.S.C. § 289 .....2, 3, 12

MISCELLANEOUS

Annual Report for Patent and Trademark Office
for Fiscal Year 1996.....9

Federal Rules of Civil Procedure
Rule 56(f) 5

PETITION FOR WRIT OF CERTIORARI

Petitioner, Richard D. Green, respectfully petitions for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The unpublished opinion of the Federal Circuit is reprinted herein as Appendix A. The Order denying the petition for rehearing and the suggestion for rehearing en banc is reprinted herein as Appendix D. The district court's order entered with regard to the cross motions for summary judgment is reprinted herein as Appendix B. The report's transcript of proceedings for the cross motions for summary judgment is reprinted herein as Appendix C.

JURISDICTION

The Federal Circuit entered its order denying a combined petition for rehearing and suggestion for rehearing en banc on October 6, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Seventh Amendment of the United States Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in

any Court of the United States, than according to the rules of the common law.

FEDERAL STATUTES INVOLVED

This case involves the following statutory provisions:

35 U.S.C. § 171 Patents for designs

• • •

The provisions of this title relating to patents for inventions shall apply to patents for designs except as otherwise provided.

35 U.S.C. § 289 Additional remedy for infringement of design patent.

Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any *colorable imitation* thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or *colorable imitation* has been applied shall be liable to the owner to the extent of his total profit, but not less than $250, recoverable in any United States district court having jurisdiction of the parties (emphasis added).

STATEMENT OF THE CASE

This case presents the question whether the Seventh Amendment permits courts in jury design patent infringement actions for damages to resolve as a matter of law disputed factual issues in conducting an infringement

analysis. The Federal Circuit approved the district court's analysis of non-infringement that necessarily depended on combining unrelated prior art design references, determining the point of novelty of a patented design, and finding that the accused product design is not a colorable imitation of the patented design by its express holding of non-infringement.

I.

THE PATENT

Petitioner Richard D. Green owns United States Patent No. Des. 349,769 titled "Protective Cap for a Baby Bottle." (App. E). This patent is for an ornamental design of a protective cap for a baby bottle. *Id.*

II.

THE ACCUSED DESIGN

Respondent Gerber Products Co. manufactures and sells a variety of baby bottles that incorporate the protective cap which is a colorable imitation or infringement of the patented design. (App. F1).

III.

DISTRICT COURT LITIGATION

Green sued Gerber for patent infringement under 35 U.S.C. § 271 and sought damages as provided under 35 U.S.C. § § 284 and 289. Before the discovery cut-off date the parties filed cross motions for summary judgment. Green filed a partial summary motion for patent

infringement. Gerber responded with its partial summary judgment motion for non-infringement and invalidity.

Green's motion introduced evidence that Gerber's protective caps are virtually identical to the protective caps illustrated by his patent. Gerber's opposition argued that an ornamental design patent cannot cover (1) the structural or functional aspects of the accused article, and (2) the ornamental aspects of the accused article are shown in the prior art. In making this argument Gerber relied on the patents to Brown (App. G), Campbell (App. H), and Zimmermann (App. I).[1]

Gerber's cross motion for invalidity contended that the Green patent was invalid (1) for obviousness over the Campbell and Zimmermann patents (App. H and I), and (2) for functionality. In opposing the invalidity aspect of the motion, Green argued that there was no teaching, suggestion, or incentive supports the ornamental modification of the Campbell patent (App. H) by the Zimmermann patent (App. I) except through the use of impermissible hindsight incentive that resulted from Gerber's copying of the Green design. Gerber did not dispute that its executives discussed Green's novel design with Green at least twice. One discussion occurred at the Juvenile Products Manufacturers Association Show in October 1992. Gerber management showed its further interest in Green's novel design at a second meeting at Chicago's O'Hare Airport on January 18, 1993.

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[1] Gerber's translation of the issued French patent to Kurt Zimmermann is provided. The original issued French patent has been omitted.

Green further demonstrated the validity of his design based upon the objective evidence of non-obviousness which included evidence that Gerber had captured a 24% market share for its protective cap and baby bottle. Green opposed the functionality aspect of Gerber's invalidity argument by demonstrating that one could accomplish the functional purpose of the design in many other ways.

Gerber's partial summary judgment motion for non-infringement relied on the same arguments that it used in opposing Green's partial summary judgment motion for infringement.

Green also filed a declaration under F.R. Civ. P. 56(f) requesting that the court deny or continue Gerber's partial summary judgment motion so that essential discovery could be completed that would have demonstrated that Gerber had copied Green's ornamental design for its protective cap.[2] (App. C13). Green needed the continuance because Gerber filed its motion only after obtaining a continuance to respond to Green's discovery. The district court denied the requested continuance.

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[2] Green believed that a compelling justification for the continuance existed. The complaint was filed on December 4, 1995. Green served his first set of discovery documents on February 27, 1996. On March 6, 1996, the district court established a discovery cut-off date of August 30, 1996. Green had anticipated receiving full and complete discovery responses from Gerber on April 1, 1996. On March 29, 1996, Green agreed to Gerber's request for a discovery response continuance until April 16, 1997.

During the summary judgment hearing, the district court first announced its tentative conclusion that it would hold the Green patent valid as narrowly interpreted and hold that Gerber's protective cap does not infringe the Green patent. (App. C3-4). The district court reasoned that the question of patent validity is one of law and thus appropriate for resolution upon summary judgment. (App. C4). In response to Gerber's challenge that the Green patent was invalid for being dictated by function, the court held that there were alternative methods of sealing baby bottle nipples. As a result, the court concluded that the particular nipple seal design is not functional. (App. C4).

In addressing the obviousness issue, the district court concluded that the patent had to be narrowly construed because a broad interpretation would lead to the finding of invalidity (App. C4). It reasoned that the elements of a sloped bottle cap and the particular nipple seal design in the Green patent had been disclosed in the prior art, ranging from the French patent (to Zimmermann), the Campbell patent, and a prior Gerber patent (to Brown). (App. G-I). Without identifying a primary and secondary reference in the court's analysis, the court reasoned that the disclosed elements from the prior art patents caused the patented design to be obvious to a designer of ordinary skill. However, the court further reasoned that it would not interpret the Green patent to be invalid if it could avoid that holding because of the presumption of patent validity. (App. C5).

The district court concluded that no material issues were in dispute concerning infringement and validity. (App. C5). It entered judgment for Gerber on the issue of

non-infringement and for Green on the issue of validity. (App. B and C).

IV.

FEDERAL CIRCUIT OPINIONS

Green appealed the district court's finding of non-infringement. Gerber appealed from the district court's validity holding. On August 12, 1997, the Federal Circuit affirmed the district court's determination of non-infringement and vacated the judgment of patent validity. (App. A1).

Green filed a petition for a rehearing and a suggestion for rehearing en banc. He asserted four probative points:

1) The decision by the Federal Circuit departed from prior case authority by permitting the combination of prior art references (a) in the absence of any primary reference and (b) without any demonstration that the combinations were suggested or taught by the secondary references.

2) The decision by the Federal Circuit approved the use of utility patent concepts and references as a basis for narrowing the scope of Green's design patent despite clear authority that prohibits such use.

3) The decision by the Federal Circuit approved the practice of allowing a trial court a free hand to deny enforceability of a design patent without either (a) considering the degree of overall visual similarity between the design patent and the claimed infringement or (b) determining and announcing on the record what the specific

points of novelty were for purposes of the infringement analysis.

4) By reasons of the errors committed by the district court, it was improper for the Federal Circuit to affirm the decision without opinion.

The Federal Circuit denied the petition for rehearing and the suggestion for rehearing en banc without comment on October 6, 1997. (App. D1).

REASONS FOR GRANTING THE WRIT

This Court should grant *certiorari* to decide whether in a design patent infringement action, where a jury is timely demanded, the Seventh Amendment permits judges to resolve, as a matter of law, all genuine disputes about the interpretation of a design patent claim, the scope of the patent claim, and the application of the patent claim in deciding that there is no infringement. In affirming the district court's finding of no infringement, the Federal Circuit ignored the precedent of this Court, its own binding precedent and more importantly, the right to a jury trial provided by the Seventh Amendment.

This case is of significant importance. If this decision is allowed to stand, the Federal Circuit's affirmance effectively eliminates Congress' intent to provide design patent holders protection from infringement. Under this ruling, a judge can combine prior art teachings from several references, without any teaching or suggestion for the combination. Then the judge can use the combined teachings to narrow the scope of the claim so much that the accused design avoids infringement. This development

will allow unscrupulous copiers of patented designs to avoid accountability for their actions by making trivial modifications to their product designs.

Design patent protection provides businesses with the opportunity to protect their investments in ornamental product designs.[3] The Federal Circuit's ruling drastically reduces design patent protection. Design patent owners will be unable to halt infringers. The constitutional right to a jury trial will no longer be available to protect a patent holder for a novel ornamental design from an infringer, even a copier.

I.

THE FEDERAL CIRCUIT'S DECISION IS INCONSISTENT WITH PRECEDENT OF THIS COURT

It has been more than 125 years since this Court has considered the test for design patent infringement. *Gorham Co. v. White*, 81 U.S. (14 Wall.) 511 (1871). This Court held:

> We hold, therefore, that if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such

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[3] In fiscal year 1996, the Patent and Trademark Office ("PTO") issued 11,346 design patents. During the period 1990-95, the PTO issued 58,920 design patents. Annual Report for PTO for Fiscal Year 1996, <http://www.uspto.gov>.

> as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other.

Gorham Mfg., 81 U.S. at 528. In establishing this test for infringement, this Court reversed the district court's holding that the test of infringement was that there be "substantial identity," "in view of the observation of a person versed in designs in the particular trade in question -- of a person engaged in the manufacture or sale of articles containing such designs -- of a person accustomed to compare such designs with one another, and who sees and examines the articles containing them side by side." *Gorham*, 81 U.S. at 527. This Court held that "[s]uch a test would destroy all the protection which the act of Congress intended to give."[4] *Id.*

In so holding, this Court stated that "there never could be piracy of a patented design, for human ingenuity has never yet produced a design, in all its details, exactly like another, so that an expert could not distinguish them." *Id.*

Despite the clear direction provided by this Court, design patent infringement law in the post-*Gorham* era evolved to impose an additional test which defeats the scope of protection granted to design patent holders. This additional test requires that the accused device must appropriate the novelty in the patented device which

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[4] Congress provided that design patents are treated as all other patents under the Patent Laws except as where otherwise provided. See, 35 U.S.C. § 171 ¶ 2. Congress provided neither a new standard for infringement nor a point of novelty standard.

distinguishes it from the prior art.[5] *Payless Shoesource, Inc. v. Reebok Intern. Ltd.*, 998 F.2d 985, 990 (Fed. Cir. 1993). While the test seems harmless, its application requires that the point of novelty be identically present in the accused design. No variations for the colorable imitations of the novel design features are tolerated.

The judicially developed point of novelty test, which is unrelated to the interpretation of a design patent claim, requires a painstaking detailed analysis of the asserted patent in conjunction with the prior art in order to identify

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[5] The point of novelty requirement for infringement has not been uniformly accepted by the circuits. Prior to the formation of the Federal Circuit, the Sixth and Tenth Circuits applied the *Gorham* infringement standard. *Burger Train Systems, Inc. v. Ballard*, 552 F.2d 1377, 1381 (10th Cir. 1977); *Schnadig Corp. v. Gaines Mfg. Co.*, 494 F.2d 383, 391 (6th Cir. 1974). The Federal Circuit in *Litton Systems, Inc. v. Whirlpool Corp.*, 728 F.2d 1423, 1444 (Fed. Cir. 1984) adopted the point of novelty requirement mentioned in *Sears Roebuck & Co. v. Talge*, 140 F.2d 395, 396 (8th Cir. 1944).

This split in authority is further demonstrated by the Federal Circuit which has repeatedly held that it will accept the decisions of the Court of Claims as binding precedent. *Pennwalt Corp. v. Durand-Wayland Inc.*, 833 F.2d 931, 951 (Fed. Cir. 1987); *South Corp. v. U.S.*, 690 F.2d 1368, 1370-71 (Fed. Cir. 1982). Despite this holding, the Federal Circuit in *Litton* ignored the holding in *Blumcraft of Pittsburgh v. U.S.*, 372 F.2d 1014, 1016 (Ct. Cl. 1967), which adopted the *Gorham* design patent infringement test.

the so-called point of novelty which must then be compared to the accused design. This test destroys the protection that Congress intended to give design patent holders under 35 U.S.C. § 289.

In conducting the point of novelty analysis, the district court performed a detailed side-by-side comparison of the Green design patent (App. E) with Gerber's protective cap. (App. F). The district court's comparison returned it to the standard that this Court rejected in 1872. The correct test is whether the invention or any colorable imitation thereof is applied to the accused design. See, 35 U.S.C. § 289.

II.

THE DECISION OF THE COURT OF APPEALS IS INCONSISTENT WITH PRECEDENT

The Federal Circuit ignored binding precedent by permitting a hindsight reconstruction of unrelated prior art references to narrow the scope of the design patent claim.

The Federal Circuit in affirming the district court allowed certain features identified in the prior art relied upon by Gerber to be improperly combined. The effect of the combination was exacerbated by the district court's vague interpretation that the Green patent must be narrowed to "particular angles and slopes" which were not found by the district court in the Gerber product. It has long been law of the Federal Circuit that the test for determining a proper combination of design patent references is "whether they are so related that the appearance of certain ornamental features in one would suggest the application of those

features to the other." *In re Glavis*, 230 F.2d 447, 450 (CCPA 1956). Moreover, as was stated in *In re Jennings*, 182 F.2d 207, 208 (CCPA 1950):

> In considering the patentability of a proposed design the appearance of the design must be viewed as a whole, as shown in the drawing, or drawings, and compared with something in existence -- not with something that might be brought into existence by selecting individual features from prior art and combining them...

More recently, the Court of Customs and Patent Appeals in *In re Rosen*, 673 F.2d 388 (CCPA 1982) expanded on the holding in *Jennings* stating that in order to constitute a reference from the prior art that bars patentability "there must be a reference, a something in existence, the design characteristics of which are basically the same as the claim design in order to support a holding of obviousness. *Rosen*, 673 F.2d at 391. *See also In re Harvey*, 12 F.3d 1061, 1063 (Fed. Cir. 1993). Finally, "A finding of obviousness cannot be based on selecting features from the prior art and assembling them to form an article similar in appearance to the claimed design." *In re Borden*, 90 F.3d 1570, 1574 (Fed. Cir. 1996). *See also Durling v. Spectrum Furniture Co.*, 100 F.3d 101, 103 (Fed. Cir. 1996) (cannot combine prior art designs without first finding a single reference that contains some overall visual appearance and design characteristics of claim design).

The district court failed to follow this clear precedent. Instead, it followed a course of "picking and choosing" among features pointed out to it by Gerber in the prior art. In

order to create out of thin air a "something" that did not actually exist prior to the Green patent. As the prior art patents to Brown, Campbell, and Zimmermann show, no prior reference relied upon by the district court combines the truncated conical shape with the nipple seal. (App. G-I). Absent such a single reference, precedent flatly prohibits combining prior art design elements. Thus, by affirming the flawed district court opinion, the Federal Circuit departed from the precedent that it is bound to follow when interpreting and applying design patents. *See, South Corp.*, 690 F.2d at 1370-71.

III.

THE SEVENTH AMENDMENT RIGHT TO A JURY TRIAL REQUIRED THE ISSUE OF INFRINGEMENT TO BE PRESENTED TO A JURY

This Court has recognized that the question of novelty is to be submitted to the jury. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 116 S.Ct. 1384, 1392 (1996). Notwithstanding this requirement, the Federal Circuit affirmed the district court's determination of non-infringement based upon district court's fact finding that the point of novelty is based upon the combining of several prior art patents. Neither Green nor Gerber identified the point of novelty as the "particular angles and slopes." Instead the district court, acting as a fact finder, wrongly made its own finding of novelty. The district court should not have decided the issue as a fact finder. It is well established that "at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether

there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

The Federal Circuit's affirmance of that there was an absence of a material issue of fact and the district court's impermissible fact finding destroyed Green's right to secure a jury trial for an issue which belongs to the jury. The Federal Circuit's affirmance represents a dramatic turning point in denying a constitutional right to a jury trial that Green deserved.

CONCLUSION

The granting of this petition will restore the patent enforcement rights for design patent holders to what Congress intended by rejecting once again the infringement standard that this Court rejected in 1872.

For the reasons set forth herein, Green respectfully requests that the Court issue a Writ of *Certiorari* to review the judgment of the Court of Appeals for the Federal Circuit.

Dated: December 30, 1997

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
97-1090, -1133

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

RICHARD D. GREEN,
Plaintiff-Appellant,
v.
GERBER PRODUCTS COMPANY,
Defendant/Cross-Appellant.

DECIDED: August 12, 1997

Before MAYER, MICHEL, and CLEVENGER,
Circuit Judges.

PER CURIAM.

Richard D. Green appeals and Gerber Products Company cross appeals the summary judgment of the United States District Court for the Central District of California, No. 95-CV-8380 (June 24, 1996). We *affirm* and court's determination of noninfringement, but *vacate* the judgment to the extent that it could be interpreted to declare that the patent is valid on the basis of the evidence submitted with Gerber's motion for summary judgment of invalidity.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
Clerk, U.S. District Court
MAY 6, 1996
Central District of California
By Deputy

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

RICHARD GREEN,
Plaintiff,
v.
GERBER PRODUCTS CO.,
Defendant.

CV 95-8380 ER (RNBx)

ORDER RE: CROSS-MOTIONS FOR SUMMARY JUDGMENT; DISMISSAL OF ACTION AGAINST DEFENDANT ON GROUND OF NO INFRINGEMENT

Plaintiff's and Defendant's Motions for Summary Judgment came before the Honorable Edward Rafeedie on April 29, 1996, in Courtroom 1. The Court, having read and considered the papers filed in support of and in opposition to the motion, and having considered oral argument of counsel, HEREBY CONCLUDES for the reasons stated in open Court that the Green design patent is valid, but that it is not infringed by the Gerber products.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve, by telefax or by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: May 6, 1996

/s/ EDWARD RAFEEDIE
EDWARD RAFEEDIE
United States District Judge

I hereby certify that this document was served by first class mail postage prepaid, to all counsel (or parties) at their respective most recent address of record in this action on this date.

Dated: _____
Deputy Clerk _____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

- - - - -

HONORABLE EDWARD RAFEEDIE, JUDGE PRESIDING

RICHARD D. GREEN,
PLAINTIFF,

VS.

GERBER PRODUCTS,
DEFENDANT.

CASE NO. CV-95-8380-ER

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, APRIL 29, 1996

MARY TUCKER, CSR 9308
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LOS ANGELES, CALIFORNIA;
MONDAY, APRIL 29, 1996
(10:00 A.M.)

THE CLERK: ITEM NUMBER THREE, CIVIL 95-8380, RICHARD GREEN V. GERBER PRODUCTS.

COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD, PLEASE.

MR. ROSENBERG: GOOD MORNING, YOUR HONOR. CHARLES ROSENBERG FOR THE PLAINTIFF, RICHARD GREEN.

MS. POTTER: GOOD MORNING, YOUR HONOR. KELLY POTTER OF QUINN, KULLY AND MORROW, HERE ON BEHALF OF DEFENDANT GERBER.

THIS MORNING MICHIGAN COUNSEL, JIM MITCHELL, WILL BE ARGUING ON BEHALF OF GERBER.

MR. MITCHELL: GOOD MORNING, YOUR HONOR.

THE COURT: GOOD MORNING.

WELL, IN THIS PATENT CASE, THE PLAINTIFF CLAIMS THAT THE DEFENDANT INFRINGES DESIGN PATENT ON THE BABY BOTTLE CAP.

THE PLAINTIFF HAS FILED A MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF INFRINGEMENT, AND THE DEFENDANT HAS COUNTERED WITH A MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF PATENT VALIDITY.

THE COURT HAS REVIEWED CAREFULLY EACH OF THE POSITIONS TAKEN BY THE PARTIES IN THIS CASE. MY TENTATIVE CONCLUSION AT THIS TIME IS AS FOLLOWS: THAT THE COURT SHOULD HOLD THAT THE GREEN PATENT IS VALID AS NARROWLY INTERPRETED AND HOLD THAT THE GREEN PATENT

IS NOT INFRINGED BY THE GERBER PRODUCT FOR THE FOLLOWING REASONS:

FIRST, OF COURSE, THE QUESTION OF PATENT VALIDITY IS A QUESTION OF LAW AND IS, THUS, APPROPRIATE FOR RESOLUTION ON SUMMARY JUDGMENT. WE HAVE THE U.S. SUPREME COURT TELLING US THIS.

THE FIRST CONSIDERATION OF VALIDITY IS WHETHER THE DESIGN IS DICTATED BY FUNCTION. FROM EXAMINING THE ALTERNATE METHODS OF SEALING OF BOTTLE NIPPLES AS PROVIDED IN THE PLAINTIFF'S EXHIBITS FOUR THROUGH SIX AND 38 THROUGH 42, THE COURT CONCLUDES THAT THE PARTICULAR NIPPLE SEAL IS NOT FUNCTIONAL.

THE NEXT CONSIDERATION IS WHETHER THE DESIGN IS OBVIOUS. THE COURT HAS EXAMINED THE SCOPE AND CONTENT OF THE PRIOR ART, AS WELL AS ALL DIFFERENCES BETWEEN THE PRIOR ART AND THE PRESENT PATENT DESIGN, AND THE LEVEL OF ORDINARY SKILL INVOLVED. IN THIS REGARD, THE COURT HAS CONSTRUED THAT THE PATENT DESIGN NARROWLY, AS THE COURT BELIEVES THAT A BROAD INTERPRETATION WOULD LEAD TO A FINDING OF INVALIDITY.

THIS IS TRUE BECAUSE THE ELEMENTS OF A SLOPED BOTTLE CAP AND THE PARTICULAR NIPPLE SEAL DESIGN IN THE GREEN PATENT HAVE BEEN DISCLOSED IN THE PRIOR ART, RANGING FROM THE FRENCH PATENT TO THE CAMPBELL PATENT, AND EVEN TO A PRIOR GERBER PATENT.

ALTHOUGH DISCLOSED ELEMENTS CAN NEVERTHELESS GIVE RISE TO A PATENTABLE DESIGN, IN THIS CASE THE COURT CONCLUDES THAT THE ONLY TWO SUCH ELEMENTS THAT ARE PRESENT HERE

WOULD BE OBVIOUS TO A DESIGNER OF ORDINARY SKILL.

THE COURT WOULD NOT INTERPRET THE PATENT TO BE INVALID IF SUCH INTERPRETATION CAN BE AVOIDED BECAUSE OF THE PRESUMPTION OF PATENT VALIDITY EXPRESSED BY THE SUPREME COURT IN THE *L.A. GEAR* CASE.

HOWEVER, INTERPRETING THE GREEN PATENT SO AS TO AVOID A FINDING OF INVALIDITY LEADS THE COURT TO THE CONCLUSION THAT THERE ARE NO MATERIAL FACTS IN DISPUTE CONCERNING THE ISSUE OF INFRINGEMENT. AND THAT SUMMARY JUDGMENT ON THIS ISSUE IS PROPERLY GRANTED IN FAVOR OF GERBER.

BY INTERPRETING THE GREEN PATENT SO AS TO AVOID INVALIDITY, THE PARTICULAR ANGLES AND SLOPES CHOSEN BY GREEN ARE SIGNIFICANT, AS ACKNOWLEDGED BY GREEN'S OWN EXPERT, WILLIAM TOBIN.

IT IS READILY APPARENT THAT THE GERBER PRODUCT EMPLOYS DIFFERENT PROPORTIONS AND ANGLES THAN THAT OF THE GREEN DESIGN PATENT.

ALTHOUGH INFRINGEMENT IS GENERALLY A QUESTIONS OF FACT, THE COURT NOTES THE FEDERAL CIRCUIT HAS APPROVED OF THE GRANTING OF SUMMARY JUDGMENT WHERE THERE ARE NO DISPUTES OF FACT.

THE COURT BELIEVES THAT THIS IS SUCH A CASE. AND ACCORDINGLY, THE COURT WOULD BE INCLINED TO GRANT SUMMARY JUDGMENT ON THE ISSUE OF INFRINGEMENT TO GERBER.

NOW, COUNSEL, DO YOU WISH TO BE HEARD?

MR. ROSENBERG: YES, YOUR HONOR.

I WOULD LIKE TO ADDRESS THE ISSUE OF VALIDITY BECAUSE THAT IS FUNDAMENTALLY INTERTWINED WITH YOUR RULING ON INFRINGEMENT.

OUR BRIEF POINTED OUT THE —

THE COURT: AREN'T YOU TRYING TO HAVE IT BOTH WAYS HERE BY ASKING FOR BROAD INTERPRETATION?

MR. ROSENBERG: WELL, YOUR HONOR, FIRST OF ALL, THERE IS NO TEACHING OR SUGGESTION IN THE REFERENCES CITED BY GERBER FOR THE DESIGN OF THE GREEN PATENT. THERE IS NO SUGGESTION IN THE FRENCH PATENT TO ZIMMERMAN. ONLY WITH IMPERMISSIBLE HINDSIGHT, YOUR HONOR, IS THIS CONSIDERED TO — THAT THE COURT CONSIDER THE GREEN PATENT TO BE NARROW. IT IS IMPORTANT TO LOOK AT THE DESIGN AS A WHOLE.

THE COURT: YOU ARE NOT TOYING WITH THE COURT'S FINDING OF VALIDITY OF THE PATENT?

MR. ROSENBERG: WELL, YOU ARE GIVING THE GREEN PATENT A VERY NARROW INTERPRETATION, YOUR HONOR.

THE COURT: THAT'S WHAT YOU ARE TOYING WITH.

MR. ROSENBERG: AND I BELIEVE —

THE COURT: HOW WOULD YOU BROADEN THE INTERPRETATION SO AS TO AFFECT THE INFRINGEMENT ISSUE?

MR. ROSENBERG: IT'S IMPORTANT TO LOOK AT THE GREEN PATENT AS IT IS IN ITS TOTALITY AND NOT TO FOCUS ON ANY SMALL ELEMENT.

WE CITED ADDITIONAL AUTHORITIES TO THE COURT THAT SMALL DIFFERENCES IN THE DESIGN

OF AN ACCUSED DEVICE AND THE PATENT IS NOT AVOIDING INFRINGEMENT.

THE COURT: WE ACKNOWLEDGE THAT THAT'S POSSIBLE UNDER SOME CIRCUMSTANCES.

MR. ROSENBERG: IN THIS SITUATION, THE DIFFERENCE IS BETWEEN — MAY I GET THE PRODUCT?

THE COURT: YES.

MR. ROSENBERG: THIS IS SIMILAR TO ONE OF THE BOTTLES THAT WE LODGED WITH THE COURT, YOUR HONOR.

THE DIFFERENCES BETWEEN THE GREEN DESIGN PATENT AND THE ACCUSED PRODUCT ARE INSIGNIFICANT. THEY ARE SUBSTANTIALLY THE SAME.

AND WHEN YOU VIEW UNDER THE ORDINARY OBSERVER TEST, THE DESIGN PATENT AND THE ACCUSED PRODUCT CLEARLY SATISFY THE INFRINGEMENT STANDARDS.

WHEN YOU GO SIDE-BY-SIDE AND LOOK AT THEM IN THEIR TOTALITY WHICH IS WHAT THE TEST IS —

THE COURT: WE ARE NOT SUPPOSED TO COMPARE THEM TO THE PRODUCT. WE SUPPOSED TO COMPARE THEM TO THE PATENT.

MR. ROSENBERG: THE DESIGN PATENT.

THE COURT: YES.

MR. ROSENBERG: TAKE THE DESIGN PATENT AND COMPARE IT TO THE ACCUSED PRODUCT, THE GERBER CAP.

THE COURT: AS REFLECTED IN THE PATENT.

MR. ROSENBERG: AS REFLECTED BY THE GREEN PATENT. THE DIFFERENCES BETWEEN THE

ORNAMENTAL DESIGN FEATURES ON THE PATENT AND THE ACCUSED PRODUCT ARE INSIGNIFICANT. AND SMALL DIFFERENCES, YOUR HONOR, DO NOT AVOID INFRINGEMENT.

THE COURT: WHAT DO YOU SEE AS THE SMALL DIFFERENCES? WHAT DO YOU SEE AS THE KEY TO THE INFRINGEMENT? IF THE SMALL DIFFERENCES DO NOT PRECLUDE INFRINGEMENT, WHAT ARE THE SIMILARITIES WHICH COMPEL THE FINDING OF INFRINGEMENT?

MR. ROSENBERG: THE DESIGN AS A WHOLE, YOUR HONOR. THE GREEN PATENT INCORPORATES AN AESTHETIC DESIGN FEATURE FOR THE NIPPLE SEALING ELEMENT AT THE UPPER PORTION ON THE INSIDE OF THE CAP. THE CAP IS A SHORTER CAP THAN THE GERBER PRIOR ART. THE GERBER PRIOR ART HAD A TALLER CAP. MR. CAMPBELL'S PATENT HAD A TALLER CAP.

THE COURT: YOU CONTEND THOSE DIFFERENCES ARE FUNCTIONAL?

MR. ROSENBERG: NO, THE DIFFERENCES ARE NOT FUNCTIONAL, YOUR HONOR.

IN ORDER TO BE FUNCTIONAL, THE DESIGN WOULD HAVE TO BE DICTATED BY THE FUNCTION, BECAUSE THERE ARE MANY DIFFERENT WAYS FOR THIS TYPE OF DESIGN TO BE MADE TO ACHIEVE THE SAME RESULT. IT IS CLEARLY NOT FUNCTIONAL. THIS WAS A CHOICE OF THE DESIGNER BASED UPON PURELY AESTHETIC REQUIREMENTS.

THE PRIOR ART WE SHOWED IN OUR BRIEF REVEALED THAT THE EXAMINER IN HIS REVIEW OF THE APPLICATION FOUND EIGHT OR NINE DIFFERENT TECHNIQUES TO ACCOMPLISH THE SAME RESULTS. THIS IS NOT DICTATED BY FUNCTION.

THIS IS DICTATED BY PURE ORNAMENTAL AND AESTHETIC PURPOSES.

THE COURT IS GIVING A VERY NARROW INTERPRETATION TO SOMETHING WITHOUT JUSTIFICATION.

THE COURT: THE POINT IS THAT IF YOU GIVE A BROADER INTERPRETATION, IT WOULD THREATEN A FINDING OF INVALIDITY.

MR. ROSENBERG: I DISAGREE WITH THAT RESULT BECAUSE I THINK THE COURT IS PROBABLY SAYING THAT THE VALIDITY MIGHT BE CHALLENGED BY THE CAMPBELL PATENT AND FRENCH PATENT TO ZIMMERMAN. BUT IN ORDER TO DEFINE THOSE REFERENCES, WE NEED TO SEE A TEACHING OR SUGGESTION. THERE IS NO TEACHING OR SUGGESTION.

I THINK THE COURT IS USING A FUNCTIONAL STANDARD FOR COMING UP WITH AN OBVIOUS CONCLUSION. IT'S NOT A FUNCTIONAL STANDARD. THE FEDERAL CIRCUIT REPEATEDLY IN THE AUTHORITIES WE CITED SAID YOU MUST LOOK AT THE AESTHETIC AND ORNAMENTAL CHARACTERISTICS OF THE PRODUCT TO SEE IF THAT SUGGESTS THE INVENTION.

THE FRENCH PATENT, WHICH IS ONE OF THE EXHIBITS, IS A PATENT THAT IS RECTANGLE OR CYLINDRICAL IN CROSS-SECTION.

TO SUGGEST THAT THIS IS OBVIOUS OR NARROW, YOU HAVE TO PICK AND CHOOSE AMONG CERTAIN CHARACTERISTICS OF THE FRENCH PATENT TO COMBINE WITH THE PRIOR ART PATENT. THAT'S NOT THE LAW. YOU ARE NOT SUPPOSED TO PICK AND CHOOSE.

IF THE COURT WANTED TO PICK AND CHOOSE, AS GERBER SUGGESTED SHOULD BE DONE, THEN WHY NOT CHANGE THE WHOLE DESIGN. WHY NOT MAKE IT RECTANGULAR IN SHAPE AND CLEAN UP THE TOP. THERE ARE MANY WAYS TO HAVE MADE THIS DESIGN.

THE COURT: ALL RIGHT, COUNSEL.

MR. ROSENBERG: THE FRENCH PATENT SUGGESTS MANY ALTERNATIVE WAYS, BUT, YET, THE COURT IS GOING WITH HINDSIGHT.

THE COURT: YOU ARE REPEATING ARGUMENT THAT YOU ALREADY MADE. SO I WILL HEAR FROM THE OTHER SIDE FOR A MOMENT.

MR. ROSENBERG: COULD I HAVE ONE LAST POINT, YOUR HONOR.

WE FILED A STATEMENT OF UNDISPUTED FACTS. WE WOULD LIKE TO POINT OUT THAT GERBER DID NOT FILE ANY ADMISSIBLE EVIDENCE IN OPPOSITION TO OUR STATEMENTS, SO THEY WILL NOT SHOW ANYTHING —

THE COURT: WHAT IS THE SIGNIFICANCE OF THAT?

MR. ROSENBERG: THEY HAVE NO EVIDENCE. JUST POINTING OUT SOMETHING. UNDER THE LOCAL RULES THEY WERE OBLIGATED TO COME FORWARD WITH ADMISSIBLE TRIAL TESTIMONY. THEY DID NOT HAVE ANY ADMISSIBLE TRIAL TESTIMONY, MERELY ARGUMENT OF COUNSEL.

THE COURT: THEY HAVE SUBMITTED EVIDENCE.

WHAT IS WRONG WITH HIS ARGUMENT?

MR. MITCHELL: THANK YOU, YOUR HONOR. I AM GLAD TO ADDRESS THOSE.

WE CONCUR, OBVIOUSLY, IN YOUR TENTATIVE JUDGMENT THAT IF YOU INTERPRET THIS CLAIM, THIS PATENT IN SUCH A WAY AS TO RENDER IT VALID, YOU HAVE TO FIND THAT GERBER DOES NOT INFRINGE.

COUNSEL WANTS TO IGNORE THE POINT OF NOVELTY TEST, WHICH THE FEDERAL CIRCUIT HAS REPEATEDLY REITERATED MUST BE CONSIDERED IN DESIGN PATENT CASES.

IN TWO OF THE CASES THAT WE CITED, *LITTON SYSTEMS* AND FMC, THE PLAINTIFFS MADE EXACTLY THIS KIND OF ARGUMENT. WELL, YOU HAVE TO LOOK AT THE DESIGN AS A WHOLE.

AND IN EACH CASE, THE COURT SAID FOR A DESIGN PATENT TO BE INFRINGED, HOWEVER, NO MATTER HOW SIMILAR TWO ITEMS LOOK, THE ACCUSED DEVICE MUST APPROPRIATE THE NOVELTY IN THE PATENTED DEVICE WHICH DISTINGUISHES IT FROM THE PRIOR ART.

THE COURT: WHAT IS THE NOVELTY THAT YOU THINK IS INVOLVED HERE?

MR. MITCHELL: IF THERE IS ANY NOVELTY AT ALL —

THE COURT: IS THERE? WHAT IS THE NOVELTY THAT THE PLAINTIFF IS CLAIMING?

MR. MITCHELL: THE NOVELTY THAT WE SEE THAT CAN BE ARGUED, IS THAT RATHER THAN USING A SQUARED OFF EDGE HERE OR SHARP ANGLE BETWEEN THIS BASE RING AND THE LEDGE, AS GERBER DID OR AS CAMPBELL DID, EITHER ONE, THE PLAINTIFF MADE A ROUNDED SHOULDER, ALL RIGHT. THAT'S ONE POINT OF DISTINCTION.

AND AS FOR THE NIPPLE SEAL ITSELF, THE PLAINTIFF RATHER THAN — BOTH THE PLAINTIFF STRUCTURE AND THE PRIOR ART, THE FRENCH

STRUCTURE, AND I DON'T CARE IF YOU LOOK AT THEIR COMMERCIAL STRUCTURE OR DESIGN PATENT. IT DOESN'T MAKE ANY DIFFERENCE TO ME. BUT BOTH OF THEM HAVE A HEMISPHERICAL DOME THAT SITS DOWN OVER THE TOP OF THE NIPPLE AND BOTH OF THE DOMES ARE RECESSED FROM THE TOP WALL AND BOTH OF THEM HAVE A CIRCUMFERENCE WALL COMING DOWN FROM THE TOP OF THE DOME — DOWN FROM THE TOP WALL TO THE BOTTOM OF THE DOME, OKAY.

BUT THE ONE DISTINCTION IS, AND GREEN'S EXPERT EMPHASIZED THIS POINT, THE VERTICAL WALL, THE WALL, THE CIRCUMFERENTIAL WALL ROUNDED THE DOME IN THE GREEN DESIGN IS ALMOST VERTICAL. WHEREAS IN THE PRIOR FRENCH PATENT, THAT WALL WAS INCLINED AT AN ANGLE. THOSE WOULD BE THE ONLY TWO POINTS OF NOVELTY, AND BOTH OF THOSE ARE FEATURES WHICH THE GERBER PRODUCT DOES NOT EMPLOY.

THE GERBER PRODUCT IS NOTHING MORE THAN GERBER PRIOR ART DESIGN, WHICH IS DISCLOSED IN A 12-YEAR OLD DESIGN PATENT. NOTHING MORE THAN A PRIOR ART DESIGN TO WHICH THE NIPPLE SEAL EXACTLY LIKE THE NIPPLE SEAL DISCLOSED IN THE FRENCH PATENT HAS BEEN ADDED. IT IS EXACTLY THE SAME KIND. GOT THE SLOPED WALLS COMING DOWN AT AN ANGLE RATHER THAN COMING VERTICALLY AS IN THE GREEN DESIGN.

NOW, AS FOR PLAINTIFF'S DISCUSSION ABOUT IT'S NOT SUGGESTED IN THE PRIOR. WHAT IS TO SUGGEST, YOUR HONOR? I'M CAMPBELL, OR I AM GERBER, AND I WANT TO PUT A NIPPLE SEAL ON THE TOP OF THE NIPPLE COVER, OKAY. WELL, WHAT IS TO SUGGEST? I'M LOOKING FOR PRIOR ART. I SEE HERE ONE IN THE PATENT. I'LL JUST USE

THIS. WHAT IS THE BIG DEAL? THERE IS NOTHING TO SUGGEST. THIS IS A CLEAR TEACHING IN THE PRIOR ART. WE ARE ENTITLED TO USE TEACHINGS IN THE PRIOR ART. WE ARE ENTITLED TO TAKE OUR OWN PRIOR ART DESIGN IN, PUT A NIPPLE SEAL IN IT, JUST LIKE ONE WE FOUND IN THE PRIOR ART.

SO WE BELIEVE YOUR HONOR IS ABSOLUTELY CORRECT. THERE ARE TWO POINTS OF NOVELTY WHICH WE THINK ULTIMATELY WILL NOT BE SUFFICIENT TO ESTABLISH THE VALIDITY OF THE PATENT, BUT WE UNDERSTAND YOUR HONOR SAYING THAT RAISES AN ISSUE OF FACT AND THE ISSUE OF VALIDITY, FINE.

BUT IF IT DOES, IF THOSE ARE THE ONLY POINTS OF NOVELTY, AND THEY ARE, THEN IT IS CLEAR THAT GERBER CANNOT, AS A MATTER OF LAW, INFRINGE THE PATENT BECAUSE GERBER HAS NOT APPROPRIATED THOSE TWO FEATURES.

THE COURT: ALL RIGHT.

JUST ONE MINUTE AND NO MORE, COUNSEL. I HAVE HEARD YOUR ARGUMENTS. I DON'T WANT TO SPEND TOO MUCH TIME ON THIS.

MR. ROSENBERG: FIRST OF ALL, YOUR HONOR, WE FILED A DECLARATION FOR ADDITIONAL DISCOVERY, 56(F) DECLARATION, I BELIEVE IT IS. WE HAVE NOT TAKEN DISCOVERY. WE DON'T KNOW IF GERBER COPIED THE GREEN DESIGN. CERTAINLY, IF GERBER COPIED THE GREEN DESIGN, AS WE THINK THE EVIDENCE WILL SHOW, THEN THE TENTATIVE CONCLUSION THAT THE PATENT SHOULD HAVE A NARROW SCOPE WOULD NOT BE SUPPORTED. WE THINK WE ARE ENTITLED TO HAVE THAT DISCOVERY, YOUR HONOR. THERE MAY BE OTHER SECONDARY ISSUES OF NON-OBVIOUSNESS —

THE COURT: THIS CASE WAS FILED LAST YEAR. HOW COME YOU HAVEN'T HAD ANY DISCOVERY?

MR. ROSENBERG: WELL, THE PARTIES HAVE BEEN TRYING TO AGREE ON A PROTECTIVE ORDER. WE HAVE BEEN ABLE TO DO SO. WE FILED OUR MOTION. GERBER ASKED FOR AN EXTENSION OF TIME TO DO DISCOVERY. THE COURT REMEMBERS THE EX PARTE APPLICATIONS THAT WERE FILED FOR CONTINUANCE OF THE MOTION. WE GRANTED GERBER A CONTINUANCE BECAUSE OF THE NATURE OF DISCOVERY. THEY ASKED FOR ADDITIONAL TIME. WE SAID FINE. THEY HAVE NOT GIVEN US ANY DISCOVERY. WE PUT AN APPLICATION IN UNDER DECLARATION SAYING WE NEED THAT DISCOVERY.

IF THEY COPIED THE GREEN DESIGN, THE PATENT HAS A MUCH BROADER SCOPE THAN THE COURT IS WILLING TO GIVE IT. COMMERCIAL SUCCESS ALSO SHOULD BE A FACTOR.

ALSO, WHAT COUNSEL DID, YOUR HONOR, IS EXACTLY WHAT THE PATENT EXAMINER DID IN THE *IN RE HARVEY* CASE. MR. MITCHELL TAKES A FUNCTIONAL ELEMENT AND SAYS: IT WOULD BE OBVIOUS TO MOVE IT OVER TO A PRIOR ART DEVICE. THE FEDERAL CIRCUIT SAID THAT'S NOT THE TEST. THERE IS NO TEACHING OR SUGGESTION HERE TO MAKE THIS ORNAMENTAL CHANGE. YOU CAN MAKE MANY CHANGES, YOUR HONOR.

THE COURT: ALL RIGHT. THAT'S ENOUGH, COUNSEL.

THE MATTER WILL BE SUBMITTED.

(PROCEEDINGS ADJOURNED.)

******

I, MARY TUCKER, CSR, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS TRUE AND CORRECT.

/S/ MARY TUCKER 5-20-96

MARY TUCKER, CSR DATE

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

97-1090, -1133

RICHARD D. GREEN,
Plaintiff-Appellant,
v.
GERBER PRODUCTS COMPANY,
Defendant/Cross-Appellant.

ORDER

A combined petition for rehearing and suggestion for rehearing in banc having been filed by the APPELLANT, and the petition for rehearing having been referred to the panel that heard the appeal, and thereafter the suggestion for rehearing in banc having been referred to the circuit judges who are in regular active service,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED and it is further

ORDERED that the suggestion for rehearing in banc be, and the same hereby is, DECLINED.

The mandate has already issued.

FOR THE COURT,
JAN HORBALY, CLERK

Dated: October 6, 1997

By Alex Van Veen
Alex Van Veen
Staff Law Clerk

cc: Charles Rosenberg
James A. Mitchell

FILED
U.S. Court of Appeals for
The Federal Circuit
OCT 6, 1997
JAN HORBALY
CLERK

GREEN V GERBER PRODUCTS COMPANY,
97-1090, -1133 (DCT - 95-CV-8380)

* *
* Note: Pursuant to Fed. Cir. R. 47.6, this order is *
* not citable as precedent. It is a public record. *
* *

UNITED STATES PATENT [19]
Green US00D349769S

[11] Patent Number: Des. 349,769
[45] Date of Patent: ** Aug. 16, 1994

[54] PROTECTIVE CAP FOR A BABY BOTTLE

[76] Inventor: Richard D. Green, 12979 Culver Blvd., Los Angeles, Calif. 90066

[**] Term: 14 Years
[21] Appl. No.: 997
[22] Filed: Nov. 2, 1992
[52] U.S. Cl. D24/197
[58] Field of Search 215/11.1, 11.2, 11.3, 215/11.4, 11.5, 11.6; D24/197

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Primary Examiner—Stella Reid
Attorney, Agent or Firm—Kelly, Bauersfeld & Lowry

[57] CLAIM

The ornamental design for a protective cap for a baby bottle, as shown and described.

DESCRIPTION

FIG. 1 is a perspective view illustrating a protective cap for a baby bottle embodying my new design, the dotted line depiction of a baby bottle and nipple being for illustrative purposes only;

FIG. 2 is a side elevational view thereof;

FIG. 3 is a top plan view thereof;

FIG. 4 is a bottom plan view thereof; and,

FIG. 5 is a transverse vertical sectional view taken generally on the line 5-5 of FIG. 3.

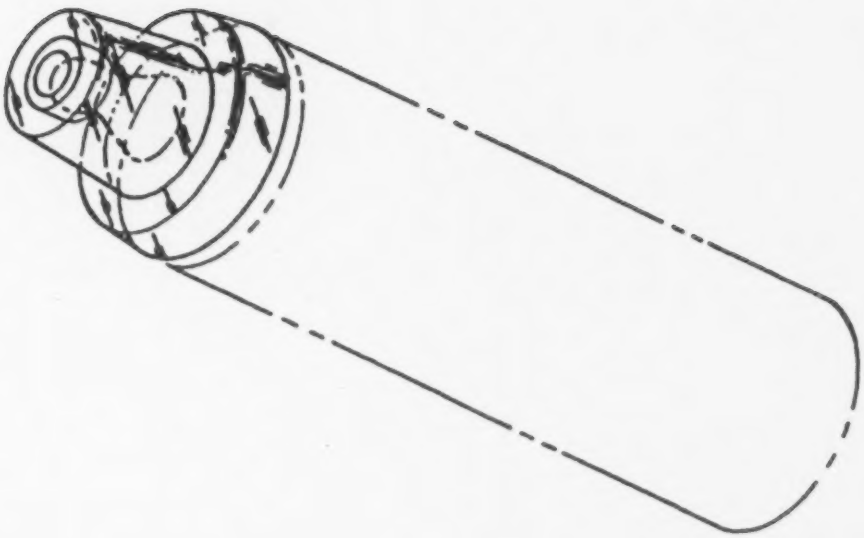
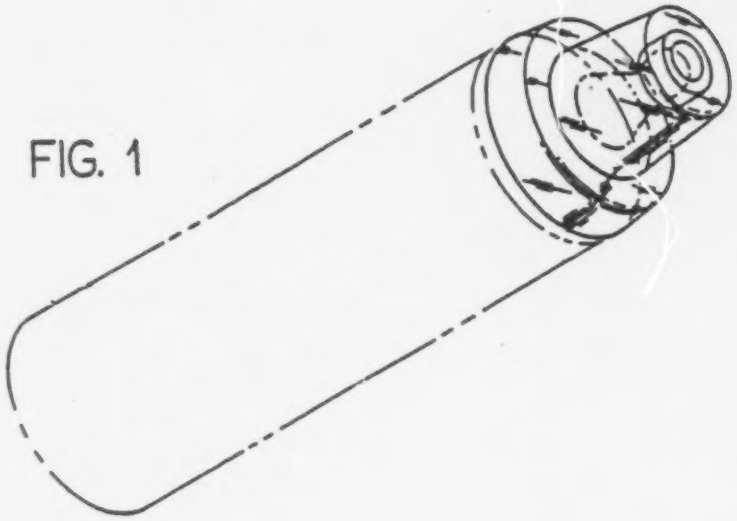


FIG. 1



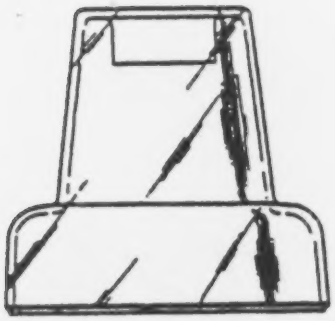


FIG. 2

FIG. 3

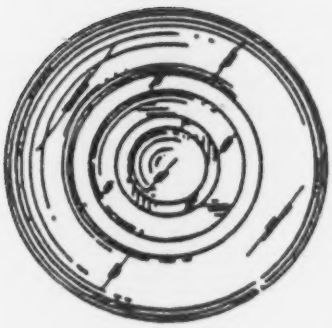


FIG. 4

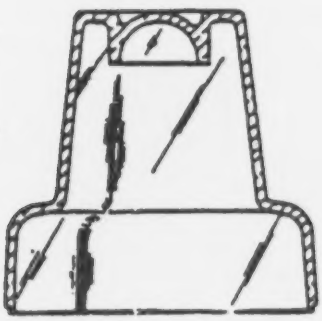
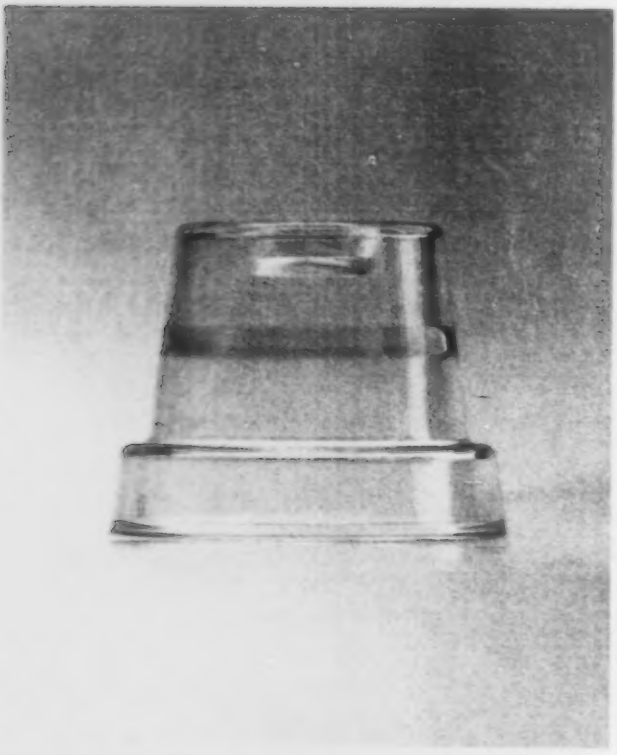


FIG. 5



THE GERBER PROTECTIVE CAP
FOR A BABY BOTTLE

UNITED STATES PATENT [19]
Brown et al.

[11] Patent Number: Des. 276,700
[45] Date of Patent: ** Dec. 11, 1984

[54] COMBINED MODIFIED HOOD AND COLLAR ASSEMBLY

[75] Inventors: John M. Brown; Donald Herritz; Leland D. Westmas, all of Reedsburg, Wis.
[73] Assignee: Gerber Products Company, Fremont, Mich.

[**] Term: 14 Years
[21] Appl. No.: 436,155
[22] Filed: Oct. 22, 1982
[52] U.S. Cl. D9/436; D9/445; D9/453
[58] Field of Search ..... D9/436, 453, 449, 445; D7/68; D24/47; 215/11 R, 11 C

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Primary Examiner—Bernard Ansher
Assistant Examiner—Linda M. Titolo
Attorney, Agent, or Firm—Townsend and Townsend

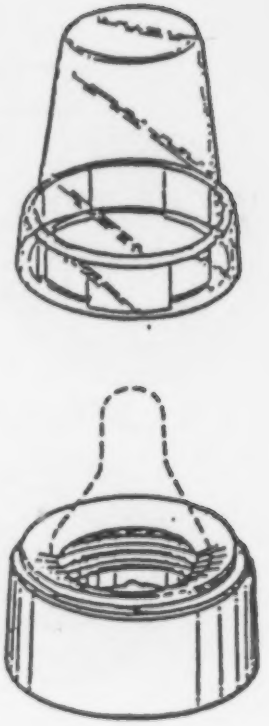
[57] CLAIM

The ornamental design for combined modified hood and collar assembly, as shown and described.

DESCRIPTION

FIG. 1 is an exploded perspective view of a combined hood and collar, showing our new design, the nipple is shown in broken lines for illustrative purposes only;
FIG. 2 is a top plan view of the hood;
FIG. 3 is a front side elevation view thereof, the rear, right and left sides of which are a mirror image thereof;
FIG. 4 is a bottom plan view thereof;

FIG. 5 is a top plan view of the collar;
FIG. 6 is a front side elevation view thereof, the rear, right and left sides of which are a mirror image thereof; and
FIG. 7 is a bottom plan view thereof.



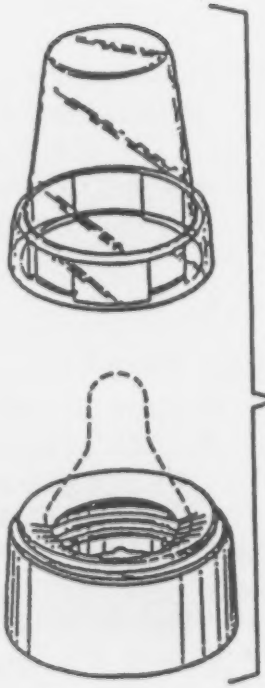


FIG. 1.

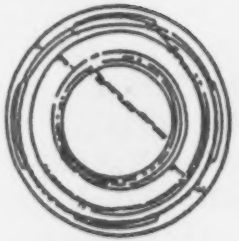


FIG. 2.

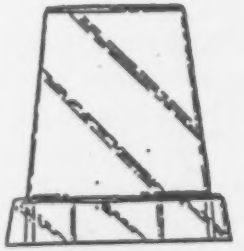


FIG. 3.

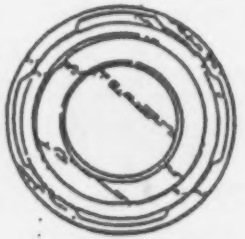


FIG. 4.

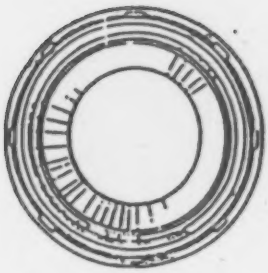


FIG. 7.

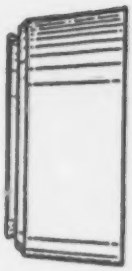


FIG. 6.

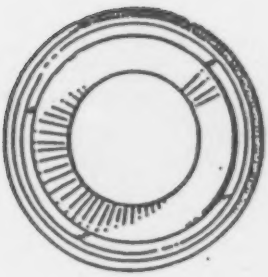


FIG. 5.

UNITED STATES PATENT [19]
Campbell et al.

[11] Patent Number: Des. 286,911
[45] Date of Patent: ** Nov. 25, 1986

[54] BABY BOTTLE

[76] Inventors: William O. Campbell; Nickie G. Campbell, both of 2633 N. Country Club Rd., Muskogee Okla. 74403

[**] Term: 14 Years
[21] Appl. No.: 638,037
[22] Filed: Aug. 6, 1984
[52] U.S. Cl. D24/47
[58] Field of Search ..... D24/47, 46, 45, 48; D9/372, 374, 383; 215/11 R, 11 B, 11 C

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Primary Examiner—A. Hugo Word
Assistant Examiner—Stella M. Reid
Attorney, Agent, or Firm—Staas & Halsey
[57] CLAIM

The ornamental design for a baby bottle, as shown and described.

DESCRIPTION

FIG. 1 is an exploded front elevational view of the baby bottle showing our design, the rear elevational view being identical therewith;
FIG. 2 is a side elevational view, the opposite side being identical therewith;
FIG. 3 is a top plan view of FIG. 1 with the cap removed;
FIG. 4 is a top plan view of FIG. 1 with the cap on;
FIG. 5 is a bottom plan view.

U.S. Patent Des. 286,911

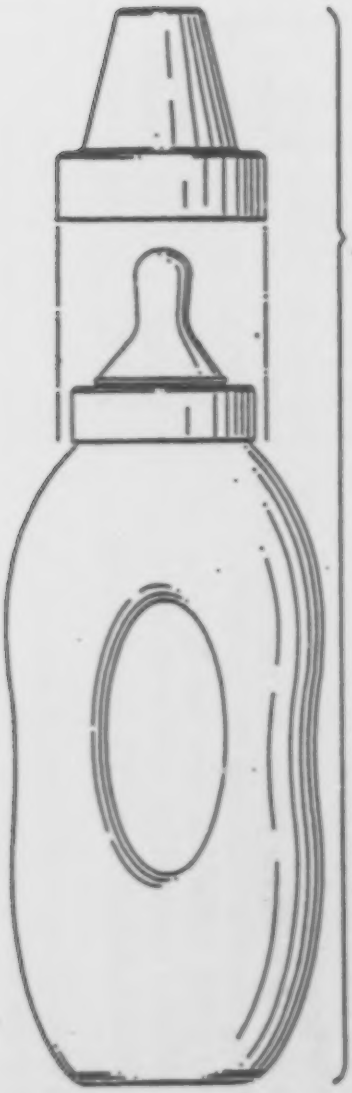


FIG. 1

FIG. 2

FIG. 3

FIG. 4

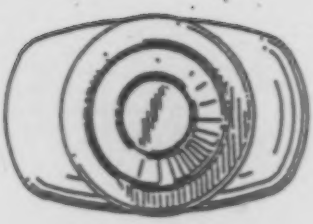


FIG. 5

FRENCH REPUBLIC
Ministry of Industry
and Trade
Dept. of Industrial
Property

PATENT No. 967.458

Gr. 19. — Cl. 4.

Container, with a special sealing feature, for a baby bottle with nipple.

Mr. Kurt ZIMMERMANN, residing in France (Alpes-Maritimes).

Applied for on June 9, 1948
at 11:25 a.m. in Nice.
Granted on March 29, 1950. —
Published on November 3, 1950.

The invention described below is designed to allow the transporting, in any position, of a baby bottle equipped with a nipple and having a liquid content, without the risk of loss of the liquid, either through openings in the nipple or through the seat of the nipple surrounding the top of the bottle. The cooling of the liquid is slowed by an insulating material which lines the inside of the unit.

The leak-proof characteristic of the bottle is obtained by a special sealing feature which, by virtue of its specially designed form, applies pressure on the rubber nipple and causes it to adopt a desired deformation (change in shape). When the special cover is removed, the nipple automatically returns to its initial shape, due to its elastic nature.

This container is practical and hygienic; all bottles and nipples of known models will fit into it.

In the attached drawings, one version of the invention is represented, by way of example, as follows:

Fig. 1 is a front view of the closed container;

Fig. 2 is a vertical section of the container, containing a baby bottle and showing the position of the nipple after pressure has been exerted by the cap/cover;

Fig. 3 is a cross-section of the cap of the container;

Fig. 4 is a separated view of the body of the container;

Fig. 5 is a view of the bottom cover of the container.

In accordance with the illustrated means of execution, the container is formed by a hollow cylindrical body 1, of metal or any other appropriate material, which holds the baby bottle 2; this body is lined on the inside with a thin layer of insulating material 3, cork for example, which allows the initial heat of the contents of the bottle to be maintained; it features several circular openings 4, or any other type of openings, which allow one to observe the level of the liquid contained in the bottle after each absorption. The diameter of body 1 narrows at its upper end so as to grip the bottle and to prevent it from slipping out when it is given to the baby. Other means for holding the bottle fast in the container may also be provided.

The container can be sealed by means of a cap/cover 5, which may be of the same material as body 1 or of a different material, and having a special shape.

The cap features, on its inside surface, a projection 6 in the shape of a truncated cone with its upper base forming a hollow hemispherical seat 7.

The cover also features two opposing indentations 8, in the form of inverted J, which interlock in the small tenons 9 provided at the upper end of body 1. Other systems for fastening the cover to the container may also be used (for example, screwing it on).

The container is sealed at the bottom by another cover 10, also having a cylindrical shape, with a flat or convex bottom, lined on the inside with a circular layer 3' of insulating material. It features, like the upper cover 5, two indentations 8' interlocking in tenons 9' provided on the lower end of body 1.

The instructions for use of the container are as follows:

After removing the bottom cover 10, leaving the cover 5 in place, the bottle with its nipple 11 is inserted into body 1 through the bottom opening. The perforated end of the nipple comes in contact with the hemispherical seat 7; by pushing the bottle all the way into the body of the container, the nipple is pressed down inside the neck of the bottle and takes on the shape indicated in fig. 2. In this manner, the two small holes 12 at the tip of the nipple are hermetically sealed by counterpressure. Furthermore, part 14 of the cover 5 presses on part 13 of the nipple, making the bottle totally leak-proof and the liquid is not able to escape regardless of the vibrations or jostling which the bottle undergoes or the positions which it assumes.

When one wants to use the bottle, cover 5 is removed; the nipple immediately resumes its initial shape due to its elasticity and the aspiration of air.

In the way of a variation, the container might not feature a cover on its upper portion, rather the top portion is shaped in the manner of the top cover 5 as described above.

It is understood that the container and the two covers may be made in any appropriate shape, dimensions or materials.

SUMMARY

The invention is characterized by a container, preferably insulated, in which the bottle equipped with its nipple is held in place due to the narrowing of the diameter of the upper end of the body of the container, or by any other holding device. The container is sealed at the top by a cover featuring, on its inside surface, a projection in the shape of a truncated cone, having on its upper base a hollow hemispherical seat sealing the openings at the tip of the nipple.

In one variation, the container might be sealed at its upper end, which is formed in the manner of the top cover as described here.

Single set of drawings

Kurt ZIMMERMANN

Counsel: R. ?

N° 967.458 M. Zimmermann

Fig.1

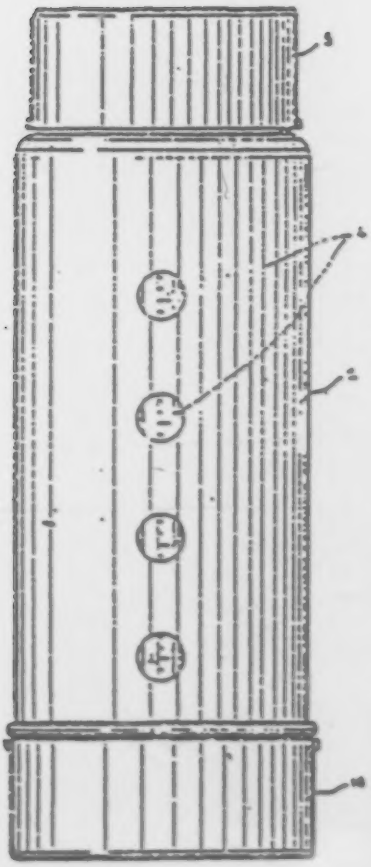
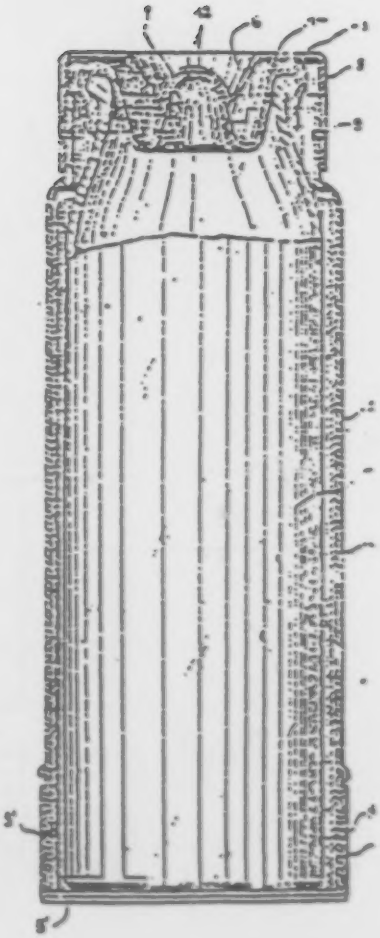


Fig.2



Pl. unique

Fig. 3

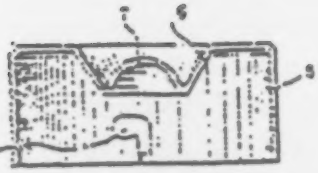


Fig. 4

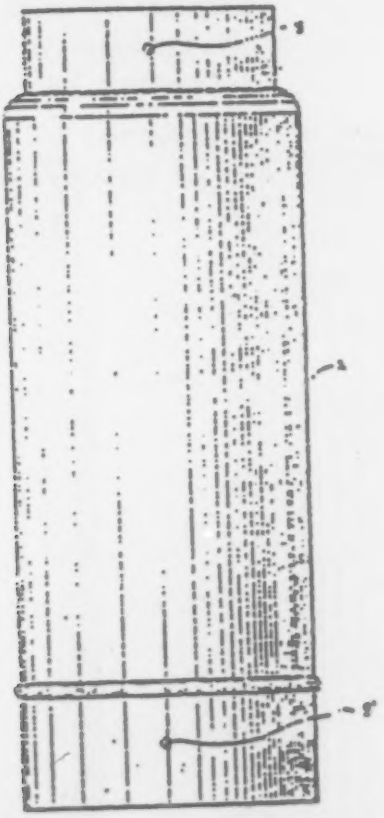


Fig. 5